



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, सोमवार, 26 अगस्त, 1985/4 भाद्रपद, 1907

हिमाचल प्रदेश सरकार

LABOUR, EMPLOYMENT AND PRINTING DEPARTMENT

NOTIFICATION

Shimla-2, the 7th August, 1985

No. Shram-1-8/84-II.—The Governor, Himachal Pradesh is pleased to constitute a State Level Committee for considering the matter regarding regularisation of Daily Wages Employees in the various Departments in Himachal Pradesh. The Committee consists the following members:—

(1) Chief Secretary	..Chairman
(2) Secretary (P.W.D.)	..Member
(3) Secretary (Forests)	..Member
(4) Secretary (M.P.P.)	..Member
(5) Secretary (L.E.P.)	..Member
(6) Secretary (Finance)	..Member
(7) Labour Commissioner-cum-Director Employment	..Member-Secretary.

2. The term of the Committee will be for three years.
3. The Committee would formulate policies & programme for regularisation of Daily Wages in the Pradesh.
4. The members of the Committee will be entitled to T.A admissible to them according to the rules governing them.
5. The Deputy Secretary/Under Secretary of the Department of Personnel to the Government of Himachal Pradesh will be the Controlling Officer in regard to the T.A. Bills.
6. The expenditure involved will be debitable to Major Head 252—Secretariat Services (A) (i) Chief Secretariat Travel Expenses".
7. This issues with the prior concurrence of the Finance Department obtained *vide* their Dy. No. 1326-Fin. (c) B(15) 12/75-II, dated 2-7-1985.

By order,
O. P. YADAV,
Commissioner-cum-Secretary.

हिमाचल प्रदेश

LABOUR DEPARTMENT

NOTIFICATION

Shimla-2, the 7th August, 1985

No. 2-8/83-Lab(Dup).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to publish the award of the Presiding Officer, Industrial Tribunal, Himachal Pradesh, Shimla relating to case No. 43/84 (H.P.M.I.D.C. Employees Union *versus* Managing Director, Himachal Wool Processors Ltd., Nalagarh) in the Official Gazette as per ANNEXURE "A" attached.

हिमाचल प्रदेश

By order,
O. P. YADAV,
Commissioner-cum-Secretary.

LABOUR DEPARTMENT

ANNEXURE "A"

Before the Presiding Officer, Industrial Tribunal, Himachal Pradesh at Labour Commissioner's Office, Shimla-171002

CASE No. 43/84
H.P.M.I.D.C. Employees Union *versus* Managing Director, Himachal Pradesh Wool Processors Ltd., Nalagarh
Petitioners.

Managing Director, Himachal Pradesh Wool Processors Ltd., Nalagarh *Respondents*.

S/Shri P. L. Beri and C.R. Tanwar authorised representative of the petitioners.

S/Shri R. L. Gupta and V. K. Gupta, authorised representative of the respondents.

AWARD

The H.P. Wool Processors Ltd., Nalagarh is Government Company. It has been closed down. The services of all the employees numbering more than 300 have been terminated as a consequence thereof. A dispute between the management and its workmen arose. The conciliation efforts failed. The dispute has been referred to this Tribunal *vide* Notification, dated 31-3-1984.

The following questions have been referred to this Tribunal:—

- (1) Whether the retrenchment of workers as a result of closure of the 'Himachal Wool Processors Ltd., Nalagarh is legal? If not what amount of compensation and relief are the workers are entitled to?
- (2) Whether the workers, who were retrenched, have been paid all the benefits under the various Labour Laws. If not, what relief they are entitled to?
- (3) Whether the claim of the workers, who have been retrenched, for their re-employment is justified. If not, the relief they are entitled to?

A notice was issued to the parties and both the workmen and the management appeared and have put in their claim petitions.

From the averments of the parties, the following issues have arisen and are framed:—

- (1) Whether the retrenchment of workers as a result of closure of the Himachal Wool Processors Ltd., Nalagarh is legal? OPR
- (2) Whether the retrenched workers have been paid all the benefits under the various Labour Laws. If not, what is the claim of the workers individually? OPR.
- (3) To what amount of compensation or any other benefit the retrenched workers are entitled to? OPP.
- (4) Whether retrenched workmen are entitled to re-employment. If so, with whom and what terms? OPR.
- (5) Whether the reference under section 10 of the Industrial Disputes Act, 1947 is not maintainable? OPR.
- (6) Whether this Tribunal can look into the validity and justification of the closure? OPR.
- (7) Whether the closure of the respondent is justified, if not, to what effect? OPR.
- (8) Relief

Both the parties have led evidence. The oral evidence in my view does not lead us anywhere for the purpose of this award. The parties representatives did not refer to the oral evidence recorded in these proceedings and rightly so. My decision on these issues is as under:

Issue No. 1:

The representatives of the workmen have argued that the closure of the respondent management is not in accordance with the provisions of law and is, therefore, illegal and as such the retrenchment as a consequence thereof is also illegal. I am afraid, I cannot examine the legality or otherwise of the closure nor I can examine the consequence of not following the prescribed procedure before the closure was effected. This question being raised by the workmen before me is beyond the scope of reference. In these proceedings, however, I can only examine whether the workmen have been paid their retrenchment compensation and other consequential benefits arising out of retrenchment. It may be noticed that after the closure, the services of the workmen are terminated and they are entitled to the compensation as if they have been retrenched.

In view of these considerations, I hold that the services of the workmen have been terminated and this termination is legal and it is based on the factum of the closure of the factory. I decide this issue accordingly in favour of the respondent and against the petitioners.

Issue No. 2:

It has been admitted before me by the parties that the workmen have been paid retrenchment compensation, up-to-date wages, wages in lieu of leave due, gratuity and bonus. The workmen have, however, been paid only one month's notice pay. It has been contended by the workmen that they are entitled to three months' wages. It has further been contended that as only one month's wages have been paid in lieu of notice, the whole proceedings are void.

At the time of closure of this factory, it had employed more than 300 workmen and the provision of Chapter VB of the Industrial Disputes Act, 1947 are attracted. The workmen are entitled to 90 days' notice under section 25-O. The factory had been closed in August, 1983. It may be noticed that the provisions of section 25-O and 25 were struck down by the Hon'ble Supreme Court in the case of *Excel Wear versus Union of India*—FJR (Vol-53) 1978. No action, therefore, could be taken with respect to 90 days' notice before closing down. The representative of the management had tried to argue that the workmen were entitled for one month's notice or one month's wages as provided for under section 25 FF. But this section is Chapter VA and the provisions of this section are, therefore, not attracted. The contention of the respondent management is without force and cannot be accepted. The compensation as a consequence of termination is to be determined under Chapter VB of the Industrial Disputes Act, 1947. The workmen under section 25N(1) are entitled to three month's notice.

I may point out that the Parliament had re-enacted section 25-O by Act No. 56 of 1982 and with a little variation, the original section 25-O has been retained. The object and reasons for enacting Amendment Act No. 46 of 1982, mentions that this amendment is necessitated because of various rulings of the Supreme Court and High Courts. These amended provisions can also be looked into to find the intention of the Parliament which had enacted in its wisdom section 25-O as it was before amendment and 25-O after the amendment mentioned above. Section 25-O was as under:—

25-O (Before Amendment):

Ninety days' notice to be given of intention to close down any undertaking—(1) An employer who intends to close down any undertaking of an industrial establishment to which this Chapter applies shall serve, for previous approval at least ninety days' before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to an undertaking set up for the construction of buildings, bridges, canals, dams or for other construction work.

(2) On receipt of a notice under sub-section (1) the appropriate Government, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking.

(3) Where a notice has been served on the appropriate Government by an employer under sub-section (1) of section 25 FF-A and the period of notice has not expired at the commencement of the Industrial Disputes (Amendment) Act, 1976, such employer shall not close down the undertaking but shall, within a period of fifteen days from such commencement, apply to the appropriate Government for permission to close down the undertaking.

(4) Where an application for permission has been made under sub-section (3) and the appropriate Government does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(5) Where no application for permission under sub-section (1) is made, or where an application for permission under sub-section (3) is made within the period specified therein or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(6) Notwithstanding anything contained in sub-section (1) and sub-section (3) the appropriate Government may, if it is satisfied owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary to do so, by order, direct that the provisions of sub-section (1) or sub-section (3) shall not apply in relation to such undertaking for such period as may be specified in the order.

(7) Where an undertaking is approved or permitted to be closed down under sub-section (1) or sub-section (3), every workman in the said undertaking who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section shall be entitled to notice and compensation as specified in section 25N as if the said workman has been retrenched under that section.

Section 25-O as amended by Act No. 56 of 1982 has come into force with effect from 8/84 (21-8-1984):

Section 25-O (After amendment) runs as under:—

Procedure for closing down an undertaking.—(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner apply, for prior permission at least ninety days before the date on which the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under section (1), the appropriate Government after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5) be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking has not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where the permission for closure is deemed to be granted under sub-section (3), every workman, who is employed in that undertaking immediately before the date of application for permission under this section shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

Taking into consideration all these factors, I am inclined to hold that section 25 FF will not govern the closure and action thereafter. The provision of Chapter VB are attracted. The workmen are, therefore, entitled to three months' notice or three months' wages. They have been paid only one month's wages in lieu of one months' notice.

It is contended by the workmen that as they have not been paid three months' wages, their termination is illegal and as such they must be deemed to be in service. This contention of workmen cannot be accepted. The workmen are not being retrenched because of the closure of the factory. Their services are being terminated. The workmen, therefore, are only entitled to three month's wages. Moreover, even for the sake of arguments, if it is assumed that the workmen have been retrenched, they are not entitled to be re-instated with all the back wages and other benefits because there is no factory running at present because of closure.

In view of the aforesaid considerations, I hold that the workmen are entitled to wages for two months more as one month's wages have already been paid to them. All the workmen be paid two months' wages. The respondent management will work out this amount to be paid to all the workmen expeditiously and will also make the payment. Accordingly, I decide this issue.

Issue No. 3:

There is no evidence brought on record of this case as to what is exact compensation to which each workman is entitled nor there is any evidence as to what amount to each workman has been paid and what remains to be paid. However, the respondent management will work out the claim of each workman and after a due notice to him and hearing him will make the payment. In case, there is any dispute between the management and workmen, the same can be settled in appropriate proceedings under section 33-C(2) of the Industrial Disputes Act, 1947. I decide this issue accordingly in favour of the workmen and against the respondent.

Issue No. 4:

The respondent management has issued memorandum, dated 8th July, 1983 (Exp-26). It runs as under:—

MEMORANDUM

The Managing Director, has proposed to transfer your services from Himachal Wool Processors Ltd. to Himachal Worsted Mills Limited, with effect from 1-8-1983 on the terms and conditions stated below:—

1. *Designation*

2. *Salary*

Rs..... plus usual allowances as applicable to the co-workers of the company from time to time. However, your wages will be protected at the time of transfer.

3. Your services would not be interrupted and conditions of the services would also be same under the new company.

4. You would be paid all service benefits by the Himachal Worsted Mills, Ltd, for which you are legally or otherwise entitled, in case you resign from the service or the management terminates you or retrench you or at the time of your superannuation. For the purpose of this condition your date of joining of H.W.P., Ltd. would be considered. If you are agreed to accept the above terms and conditions, you shall be transferred after the receipt of duplicate letter together with proforma attached.

for Himachal Wool Processors Ltd.,

Sd/-
P. D. SHARMA,
Assistant Secretary.

All the workmen, in reply to this memorandum have opted to accept service with the Himachal Worsteds Mills, Ltd., but they have not been employed. The workmen had also tried to be adjusted with other public sector companies or Government departments but they have failed. It was contended before me that the Government should have intervened and should have provided alternate employment to the workmen either in its Departments or in any other Government Company. I am afraid, even if I agree that the workmen should be given an alternate job, I will not be able to do anything in the matter. The Government is not party to these proceedings. The respondent management has closed down the factory. There are no posts available in the respondent management although they have asked for options *vide* P-26. There is no enforceable agreement between workmen and the respondent management. I, therefore, hold that the workmen are not entitled to be re-employed by the respondent management. I decide this issue accordingly in favour of the respondent management and against the workmen.

Issue No. 5:

This issue has not been pressed before me by the respondent management and I see nothing wrong in this reference. This reference is valid and legal as it is covered by section 10 of the Industrial Disputes Act, 1947. I decide this issue accordingly in favour of the workmen and against the respondent management.

Issue No. 6:

This question is only as academic one. On a proper reference, this Tribunal can look into the justification, legality and validity of the closure. Such a dispute is covered under III Schedule (Item 10 of the Industrial Disputes Act, 1947). The relevant provisions are as under:—

THE THIRD SCHEDULE

(SECTION 7-A)

Matters within the jurisdiction of Industrial Tribunal

Item 10. Retrenchment of workmen and closure of Establishment

Issue No. 7:

I have already observed while deciding issue No. 1 above that the question of the validity and legality of the closure has not been referred to this Tribunal. As such this question cannot be determined by me in these proceedings. I, therefore, decide this issue accordingly.

RELIEF

In view of the aforesaid considerations and decisions on the various issues, all these three questions referred to this Tribunal *vide* notification, dated the 31st March, 1984, stand answered. A copy of this award may be sent to the Government for further necessary action and publication of the same in the Rajpatra.

The respondent management has un-necessarily raised the plea that the workmen have been paid all their dues and wages although they have not been paid wages for two months as observed above. The respondent management will pay cost of these proceedings to the workmen. I quantify these costs at the rate of Rs. 600.

S. S. KANWAR,
Presiding Officer,
Industrial Tribunal, Himachal Pradesh, Shimla.
7th July, 1985.

OFFICE OF THE DISTRICT MAGISTRATE, UNA, DISTRICT UNA, H.P.

NOTIFICATION

Una, the 2nd August, 1985

No. FDS-Una-6-1136/82 (Vol-II).—In supersession of all previous orders regarding fixation of maximum retail sale price including taxes and in exercise of the powers conferred upon me under clause 3(1)(e) of the H.P. Hoarding and Profiteering Prevention Order, 1977, I, S. Padmanabhan District Magistrate, Una, do hereby fix the maximum retail sale price including taxes of the following articles of Schedule I of the Order, in any establishment in Una district which a dealer may charge as per schedule below with immediate effect:—

Sl. No.	Item of the Articles as per schedule	Name of the Commodity	Maximum retail sale rate inclusive of all taxes
1.	2(i)	Bread weighing 400 grams Bread weighing 200 grams	.. Rs. 1.70 per bread .. Re. 0.80 per bread
2.	12 and 13	<i>Meat/Eggs:</i> (i) Meat Goat (ii) Egg	.. Rs. 19.00 per kg .. Re. 0.65 per egg
3.	17	<i>Cooked food served in Dhabas:</i> (i) Simple khana full diet with one vegetable, dal and salad (muli and onion) (ii) Rice s per-fine full diet with one vegetable, dal and salad (muli and onion) (iii) Special vegetable per plate	.. Rs. 3.00 per diet .. Rs. 3.50 per diet .. Rs. 1.50 per plate
4	18	(i) Milk ki tcha (ii) Milk boiled without sugar (iii) Milk boiled with sugar (iv) Curd	.. Rs. 3.40 per litre .. Rs. 3.70 per litre .. Rs. 4.00 per litre .. Rs. 4.50 per kg

These rates shall remain in force for 30 days from the date of issue of this order.

S. PADMANABHAN,
District Magistrate, Una,
District Una.